

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TAMIRA SMILEY,

Plaintiff,

v.

No. _____

NEW MEXICO HUMAN SERVICES
DEPARTMENT, DUSTIN ACKLIN, in his
official capacity with the NMHSD,
CRYSTAL MARTINEZ, in her official
capacity with the NMHSD,

Defendants.

NOTICE OF REMOVAL

Defendants the New Mexico Human Services Department, Dustin Acklin, and Crystal Martinez (collectively, “Defendants”), hereby remove this case, styled *Smiley v. New Mexico Human Services Department*, No. D-202-CV-2021-05548, before the Second Judicial District Court in and for the County of Bernalillo, New Mexico, to the Federal District Court for the District of New Mexico, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

I. STATE COURT PROCEEDINGS

1. On September 22, 2021, Tamira Smiley filed in the Second Judicial District Court a complaint for racial discrimination in violation of the New Mexico Human Rights Act; retaliation in violation of the New Mexico Human Rights Act; violation of 42 U.S.C. § 1981; violation of 42 U.S.C. § 1983; violation of the Family and Medical Leave Act (29 U.S.C. § 2601 *et seq.*); violation of the Fourteenth Amendment to the United States Constitution; and retaliation in violation of the First Amendment to the United States Constitution.

2. Ms. Smiley completed service on Defendants by delivering a copy of the summons and complaint to the New Mexico Attorney General on January 11, 2022. Rule 1-004 NMRA.

3. A true and correct copy of the Complaint is attached hereto as Exhibit A.

4. A true and correct copy of Plaintiff's Jury Demand is attached hereto as Exhibit B.

5. A true and correct copy of the Arbitration Certificate filed by Plaintiff to open the case is attached hereto as Exhibit C.

6. True and correct copies of the Summons Returns for the New Mexico Human Services Department, Dustin Acklin, Crystal Martinez, and the New Mexico Attorney General are attached hereto as Exhibits D-G, respectively.

7. There have been no other filings in the state court proceeding.

II. REMOVAL IS TIMELY

8. Plaintiff's Complaint was filed on September 22, 2021. Defendants were served with Plaintiff's Complaint on January 11, 2022. This Notice of Removal is timely because it has been filed within thirty (30) days of receipt of service. 28 U.S.C. § 1446(b)(1).

III. VENUE AND JURISDICTION

9. Under 28 U.S.C. § 1331, federal courts are vested with jurisdiction to consider cases or controversies "arising under" the laws of the United States of America. Removal of such cases is governed by 28 U.S.C. § 1441(b).

10. This Court has appropriate jurisdiction under 28 U.S.C. § 1331 with respect to the claims arising under the United States Constitution, 42 U.S.C. § 1981, 42 U.S.C. § 1983, and 29 U.S.C. § 2601 *et seq.*

11. This Court has appropriate supplemental jurisdiction over the remaining claims. *See* 28 U.S.C. § 1367(a).

12. Venue is appropriate in this Court because the District of New Mexico embraces Bernalillo County, New Mexico. 28 U.S.C. § 1441(a).

IV. NOTICE TO OPPOSING PARTY

13. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve on Plaintiff a copy of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the Second Judicial District in the County of Bernalillo, New Mexico where the State Court Action is pending.

V. CONCLUSION

14. Defendants pray that this Court accept removal of the above-described action from the Second Judicial District Court in Bernalillo County, New Mexico, to the Federal District Court for the District of New Mexico.

MONTGOMERY & ANDREWS, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing, and by email:

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